

CRIME & COURTS

Pilot Flying J fraud: Ex-account rep Heather Jones blames racist song for guilty verdict

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She didn't know, it wasn't her idea, and she never even listened to the song.

That's the argument Heather Jones' lawyer makes in demanding a new trial for the former Pilot Flying J account representative, found guilty last year of conspiracy to commit fraud against trucking customers after a federal trial that included tapes of "the most hateful speech imaginable" - none of it used by Jones.

The recordings played at the trial from a Pilot sales conference "consist entirely of hateful speech ... (and) one of the most offensive songs ever recorded," her attorney, Benjamin Vernia, wrote in an appeal filed this week. "There is a significant danger of spillover prejudice. ... The taint of that prejudice justifies granting Jones a new trial."

Loathsome lyrics

The same jury found Mark Hazelwood, Pilot's former president, guilty of wire fraud, witness tampering and conspiracy to commit wire and mail fraud, and Scott Wombold, a former Pilot vice president, guilty of wire fraud. All three have been sentenced to prison time, but thanks to a higher court, they'll stay free on house arrest until judges rule on their appeals.

All three insist jurors never should have heard undercover recordings by an FBI informant, Vincent Greco, of Hazelwood and other Pilot executives cursing, using racist language and listening to legendary outlaw country singer David Allan Coe albums that include a song about interracial sex.

Hazelwood called it "our greasy (racial epithet) song." Jones' attorney says she wasn't even there when her bosses played the song.

"To describe this song (and the recorded approval) as racist significantly understates its impact," Vernia wrote.

At least one trial juror was black, as is U.S. District Judge Curtis Collier, who presided over the trial and denied Jones' move to split her case from Hazelwood's after the tapes were played in court. Her lawyer says those recordings, which bore an "extraordinarily marginal and tenuous connection" to the fraud charges, poisoned jurors against her to the point a fair trial would have been impossible.

Hazelwood and Wombold have made nearly identical arguments.

A common conspiracy?

Pilot's rebate program offered discounts on diesel fuel to trucking customers in exchange for guaranteeing a minimum number of gallons per month. Sales reps promised rates based on wholesale fuel costs plus a pumping fee, usually a few cents per gallon.

Pilot staff calculated the discounts day by day, for what became known as a "manual rebate" — called "Manuel" for short. Shorting customers a few cents here and there added up to bigger profits, commissions and bonuses.

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Pilot staffers kept two sets of books, bragged about the fraud in emails and talked openly about the scheme at sales meetings — in front of Greco, who wore a wire for the FBI. Court records indicate the fraud stretched back to at least 2008 and ended after FBI and IRS agents raided Pilot's corporate headquarters on Lonas Road in West Knoxville on April 15, 2013.

Jones didn't work in Knoxville and rarely talked to other account or sales reps within the company. She made little in commission on the fraud - less than \$5 per account, according to the appeal - and never changed any rebates without specific orders from her boss, Brian Mosher, who later turned witness for the prosecution.

At one point, Mosher even reassured Jones changing the rebates was legal.

Jones argues the judge refused to instruct jurors, as her attorneys requested, that trial testimony indicated the fraud could have been less the product of an organized conspiracy - as former Pilot sales vice president John Freeman admitted in court - than of a few greedy executives like Mosher and Hazelwood operating under a common, unspoken

"The vast majority of the government's witnesses and exhibits did not pertain to Jones," Vernia wrote. "Had the jury received her legally proper proposed instructions, there is a substantial chance that it would have acquitted her."

Seventeen former Pilot Flying J staffers pleaded guilty in the case, including Mosher. Pilot Flying J's board paid a \$92 million criminal penalty, along with an additional \$85 million to resolve trucking customers' claims. CEO Jimmy Haslam denied knowledge of the fraud and hasn't been charged.

It's not clear when the U.S. 6th Circuit Court of Appeals might rule on Jones' case. She faces a sentence of two years and nine months in federal prison if her appeal fails.

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